

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Orbin Zaldivar, individually and on behalf of all others
similarly situated,

Case No.: 14-cv-00924 (SJF)(AKT)

**DECLARATION OF
ORBIN ZALDIVAR**

Plaintiffs,
-against-

JMJ Caterers, Inc. d/b/a The Metropolitan, Michael
Giamalvo, Janender Narang, AAFF, Inc. d/b/a The
Metropolitan and Frank J. Sciame, Jr.

Defendants.

I, Orbin Zaldivar, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that
following is true and correct to the best of my knowledge and belief.

1. I currently reside in the State of New York, Nassau County.
2. I submit this declaration at the request of my attorney in support of our motion for
court-authorized notice.
3. The information in this declaration is based upon my recollection. To the extent that
there are specific dates or work schedules alleged herein, they are approximations made to the best of
my recollection.
4. I worked as a dishwasher and food preparer for the Metropolitan from
approximately February 2010 until December 21, 2013.
5. From approximately February 2010 through approximately May 2011, my rate of
pay was \$10 per hour. From approximately February 2010 through approximately May 2011 my
work schedule was from 9 A.M. – 9 P.M., Tuesday through Sunday.

6. From approximately May 2011 through December 21, 2014, my regular rate of pay was \$12 per hour. From approximately May 2011 through December 21, 2014, my work schedule was from 1:00 PM – 1:00 AM, Tuesday through Sunday.

7. While I was employed at the Metropolitan, they did not pay me overtime at the overtime rate. Instead, they paid me in cash at my regular rate of pay.

8. This practice was not limited to me, but was used by the Metropolitan to deny overtime to all kitchen staff, servers and busboys.

9. The Metropolitan employed four kitchen staff when I worked there – me, Luis, Diego and Orlando. In addition to the kitchen staff, the Metropolitan employed at least 12 busboys and 4 servers.

10. The Metropolitan, for the entire time that I worked there, had a two punchcard system. Each employee used one punchcard for the first 40 hours, and a second punchcard to record overtime hours. I was taught to use this system by woman by the name of “Pamela.” She told me to punch the first card for four days, and then she would take out the first card and replace it with a second. Each week I therefore punched two cards.

11. The punch clock is located in the basement of the Metropolitan, located at 3 Pratt Blvd, Glen Cove, New York. Next to the punch clock was a punchcard rack with the name of each employee. There were about 24 punchcards in total, one for each employee.

12. At the beginning of the week I would punch in at the beginning of the day and punch out at the end of the day. Pamela would check the cards of each employee. When the employee reached 40 hours (usually after 4 days), she would remove the first punchcard (the regular punchcard), and replace it with a new card (the overtime card).

13. Many times during my employment I saw Pamela reviewing the punch cards on a Thursday or Friday and replacing them with new cards. I would approximate that I saw her do this at least 10 times.

14. This “system” was used for all busboys, servers, and kitchen workers.

15. For example, Alberto was a busboy. I do not know his last name. I had a conversation with him in 2012. Alberto told me that it “wasn’t good” that he worked so many hours and that he was not paid for his overtime at “time-and-a-half.”

16. On another occasion I heard a server by the name of Alma complain to a group of busboys and servers that she was unhappy with the Metropolitan’s not paying overtime to them.

17. In December 2013 I complained to Michael Giamalvo and his partner, who I believe is Indian, in the kitchen of the Metropolitan. I told them that I thought I deserved a ½ hour lunchbreak and that I wanted to be paid extra for my overtime hours. They said “we can’t.”

18. Since this lawsuit was brought, a current employee of the metropolitan have told me that they do not work overtime anymore. Because employees can no longer work overtime, the Metropolitan has hired more workers. For example, in the kitchen, instead of 4 workers, they now have six or seven. I do not feel comfortable providing the name of this current employee because she is afraid of losing her job.

19. The information contained in this declaration is based upon my own personal knowledge and experience, conversations with co-workers, and conversations between co-workers that I have heard.

20. I respectfully request that the Court grant our request to issue notice of this case to all Servers, Busboys and Kitchen Staff who have worked at the Metropolitan for the past three years.

I declare that the foregoing is true and correct.

Dated: Glen Cove, New York

3.27.2015


Orbin Zaldivar